

# Journal of the House

FORTY-NINTH DAY

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HALL OF THE HOUSE OF REPRESENTATIVES,  
TOPEKA, KS, Monday, March 25, 2002, 3:00 p.m.

The House met pursuant to adjournment with Speaker pro tem Aurand in the chair.

The roll was called with 114 members present.

Rep. O'Brien was excused on verified illness.

Reps. Klein, Lightner, Neufeld, Patterson, Powers, Sharp, Spangler, D. Williams, Wilson and Winn were excused on excused absence by the Speaker.

Prayer by Chaplain Chamberlain:

Lord of Life, as we gather at the beginning of a week sacred in many of our faiths, we come in humility to thank you for your blessing, to remember the gifts that you give to us and to seek your guidance and your will as we live our lives together.

Help us in this season of remembrance to reflect on the gifts of sacrifice and of liberation from bondage. We proclaim that you are the God who sets us free to live a life of promise in a land of promise. We only need to look at the images on our television sets of other places in our world to know that the bounty in which we live is a blessing beyond the imagination of many.

More than material things, however, you bless us with hope that springs from our liberty and our community. We thank you for wisdom that brought forth a new nation on this continent and which sustains us in our struggle to be stewards of your blessing. Bless the stewards who gather as the people's representatives. Bless them in their individual lives and in their life together as a legislature. Grant to the leadership of the House a vision that sees over visible horizons to a future alive for all. Grant to the membership of the House the gift of patience and perseverance in the face of struggles that challenge. Grant to the people of this state an appreciation of your blessing of liberty and justice for all. Amen.

The Pledge of Allegiance was led by Rep. Aurand.

## REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills and resolutions were referred to committees as indicated:

Appropriations: **SB 484**; **Sub. SB 513**.

Federal and State Affairs: **SCR 1620**, **SCR 1624**.

Judiciary: **SB 297**.

Utilities: **HB 3031**; **SB 296**.

## CONSENT CALENDAR

No objection was made to **HB 3021** appearing on the Consent Calendar for the second day.

## FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

Speaker pro tem Aurand announced that order of business, Final Action on Bills and Concurrent Resolutions, would be passed over today.

**MOTIONS TO CONCUR AND NONCONCUR**

On motion of Rep. Freeborn, the House nonconcurred in Senate amendments to **HB 2607** and asked for a conference.

Speaker pro tem Aurand thereupon appointed Reps. Freeborn, Sloan and Flora as conferees on the part of the House.

On motion of Rep. Freeborn, the House nonconcurred in Senate amendments to **HB 2704** and asked for a conference.

Speaker pro tem Aurand thereupon appointed Reps. Freeborn, Myers and Flora as conferees on the part of the House.

**REPORTS OF STANDING COMMITTEES**

The Committee on **Taxation** recommends **HB 2706** be amended on page 1, in line 20, after the period by inserting "If the department proposes to change the tax or refund due on a return filed by a taxpayer, correspondence detailing the change shall be sent to the taxpayer. The correspondence shall specifically identify the proposed change and explain in simple and nontechnical terms the reasons for the change."; in line 22, by striking "\$500" and inserting "\$750 for individual accounts and in excess of \$2,000 for business accounts"; in line 24, before the period by inserting "and shall provide the name and contact telephone number of the employee performing any such review"; in line 28, by striking "only" and inserting "discuss or"; in line 29, before the period by inserting ", including collection matters"; in line 36, by striking all after the second period; in line 37, by striking "settle" and inserting "Upon a resolution of"; in line 39, by striking "settlement" and inserting "resolution"; in line 41, by striking "settlement" and inserting "resolution";

On page 2, in line 1, by striking all before the period and inserting "resolution"; by striking all in lines 2 through 8 and by inserting a new section to read as follows:

"New Sec. 5. The secretary of revenue is hereby authorized to adopt rules and regulations necessary to administer and enforce, as provided by law, the provisions of chapters 41 and 79 of the Kansas Statutes Annotated. All rules and regulations of the secretary of revenue in existence on the effective date of this act shall continue to be in effect and shall be deemed to be rules and regulations of the secretary until revised, amended or nullified pursuant to law.";

Also, on page 2, in line 13, by striking "(1)"; in line 20, by striking all after the comma; by striking all in line 21; in line 22, by striking all before the first "the"; by striking all in lines 26 through 43;

By striking all on pages 3 through 6;

On page 7, by striking all in lines 1 through 26 and inserting a new section to read as follows:

"Sec. 8. K.S.A. 2001 Supp. 74-2438 is hereby amended to read as follows: 74-2438. An appeal may be taken to the state board of tax appeals from any finding, ruling, order, decision, final determination or other final action, including action relating to abatement or reduction of penalty and interest, on any case of the secretary of revenue or the secretary's designee by any person aggrieved thereby. Notice of such appeal shall be filed with the secretary of the board within 30 days after such finding, ruling, order, decision, final determination or other action on a case, and a copy served upon the secretary of revenue or the secretary's designee. *An appeal may also be taken to the state board of tax appeals at any time when no final determination has been made by the secretary of revenue or the secretary's designee after 270 days has passed since the date of the request for informal conference pursuant to K.S.A. 79-3226, and amendments thereto and no written agreement by the parties to further extend the time for making such final determination is in effect.* Upon receipt of a timely appeal, the board shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act. The hearing before the board shall be a de novo hearing unless the parties agree to submit the case on the record made before the secretary of revenue or the secretary's designee. With regard to any matter properly submitted to the board relating to the determination of valuation of residential property or real property used for commercial and industrial purposes for taxation purposes, it shall be the duty of the county or district appraiser to initiate the production of evidence to demonstrate,

by a preponderance of the evidence, the validity and correctness of such determination, except that no such duty shall accrue with regard to leased commercial and industrial property unless the property owner has furnished to the county or district appraiser a complete income and expense statement for the property for the three years next preceding the year of appeal. No presumption shall exist in favor of the county or district appraiser with respect to the validity and correctness of such determination. No interest shall accrue on the amount of the assessment of tax subject to any such appeal beyond 120 days after the date the matter was fully submitted, except that, if a final order is issued within such time period, interest shall continue to accrue until such time as the tax liability is fully satisfied, and if a final order is issued beyond such time period, interest shall recommence to accrue from the date of such order until such time as the tax liability is fully satisfied.”;

Also, on page 7, in line 37, by striking all after the period; in line 38, by striking all before “The”;

On page 8, in line 16, before “constitutes” by inserting “issued within or after 270 days, with or without extension.”; in line 19, before the period by inserting “at any time provided that a written extension of time is not in effect”; in line 28, by striking “\$20” and inserting “\$5 unless the secretary or the secretary’s designee determines the administration and collection cost involved in collecting an amount over \$5 but less than \$100 would not warrant collection of the amount due”;

By striking all in lines 31 through 43;

By striking all on page 9;

On page 10, by striking all in lines 1 through 13 and inserting the following:

“Sec. 10. K.S.A. 79-3650 is hereby amended to read as follows: 79-3650. (a) A refund request may be filed directly by a consumer or purchaser if the consumer or purchaser: (1) paid the tax directly to the department; (2) provides evidence that the retailer ~~refused or~~ was unavailable to refund the tax; (3) provides evidence that the retailer did not act upon its refund request in a timely manner as provided in subsection (b), or; (4) ~~submits such a refund request pursuant to subsection (c)~~ *provides a notarized statement to the department from the retailer that the retailer: (A) Will not claim a refund of the same tax included in the purchaser’s or consumer’s refund request; (B) agrees to provide to the consumer or purchaser any information or documentation in the retailer’s possession needed for submission to the department to support or prove the refund claim; (C) has remitted to the state the tax sought to be refunded; and (D) has not taken or will not take a credit for such tax. A retailer providing false information in any such statement shall be subject to penalties prescribed by K.S.A. 2001 Supp. 79-3615(h), and amendments thereto.*

(b) If the director of taxation finds upon proper showing that a consumer or purchaser submitted a refund request to a retailer that was not acted upon by the retailer in a timely manner, the director shall extend the time for filing the request with the department beyond the three year limitation period that is otherwise provided by the time attributed to the delay caused by the retailer.

~~(c) If, during the course of an audit examination of a business as a purchaser or consumer, it is determined that a vendor has collected Kansas tax from the purchaser on a transaction that is not subject to tax imposed under this act, the purchaser may apply directly to the director for an offset or refund of the tax, notwithstanding subsection (a), if: (1) the purchaser is currently registered to collect and remit tax, and (2) the purchaser provides the director with an affidavit or other acceptable documentation that assures the purchaser has not and will not request a duplicate refund through the vendor.~~

Sec. 11. K.S.A. 79-3226 and 79-3650 and K.S.A. 2001 Supp. 74-2438 are hereby repealed.”;

By renumbering existing sections accordingly;

In the title, in line 10, by striking all after “K.S.A.”; in line 11, by striking “60-2310” and inserting “79-3226 and 79-3650 and K.S.A. 2001 Supp. 74-2438”; and the bill be passed as amended.

## REPORT ON ENGROSSED BILLS

**HB 2643, HB 2736, HB 2737, HB 2828, HB 3011** reported correctly engrossed March 22, 2002.

**REPORT ON ENROLLED BILLS**

**HB 2761, HB 2769** reported correctly enrolled, properly signed and presented to the governor on March 25, 2002.

**REPORT ON ENROLLED RESOLUTIONS**

**HR 6003** reported correctly enrolled and properly signed on March 25, 2002.

On motion of Rep. Weber, the House adjourned until 11:00 a.m., Tuesday, March 26, 2002.

JANET E. JONES, *Chief Clerk.*

CHARLENE SWANSON, *Journal Clerk.*

